




CLOSED CASE SUMMARY

ISSUED DATE: OCTOBER 18, 2023

FROM: DIRECTOR GINO BETTS 
OFFICE OF POLICE ACCOUNTABILITY

CASE NUMBER: 2023OPA-0211

Allegations of Misconduct & Director's Findings

Named Employee #1

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Unfounded
# 2	8.100 - De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force.	Not Sustained - Unfounded

Named Employee #2

Allegation(s):		Director's Findings
# 1	8.200 - Using Force (1) Use of Force: When Authorized	Not Sustained - Training Referral
# 2	8.100 - De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force	Not Sustained - Unfounded

This Closed Case Summary (CCS) represents the opinion of the OPA Director regarding the misconduct alleged and therefore sections are written in the first person.

EXECUTIVE SUMMARY:

It was alleged that Named Employee #1 (NE#1) and Named Employee #2 (NE#2) used unauthorized force and failed to exhaust de-escalation options during Community Member #1's (CM#1) arrest.

ADMINISTRATIVE NOTE:

On September 6, 2023, the Office of Inspector General (OIG) certified OPA's investigation as thorough, timely, and objective.

SUMMARY OF INVESTIGATION:

On April 21, 2023, NE#1 and NE#2 responded to a suspicious vehicle call. The 9-1-1 call was made at 3:34 PM, reporting:

SINCE [9:45 A.M.], [VEHICLE] PARKED OUTSIDE OF [THE 9-1-1 CALLER'S] HOUSE. NO [WEAPONS] SEEN. [POSSIBLY] HIGH. MALE [SUSPECT] PACING AROUND [VEHICLE] AND FEMALE SITTING IN PASSENGER SEAT.



NE#1 noticed that the pickup truck's license plates were removed. CM#1, standing near the truck's open front passenger door, looked in their direction, entered the truck, and sat in the driver's seat. NE#1 ran to the truck and saw CM#1 trying to start it with a screwdriver. NE#1 and NE#2 grabbed and attempted to arrest CM#1. During the struggle, NE#2 TASED CM#1.

NE#1 wrote the incident report. He noted that he and NE#2 were in full uniform and a marked patrol car during their response. NE#1 stated that the 9-1-1 caller indicated a female in the truck who appeared intoxicated, and the male—CM#1—paced around the truck. NE#1 stated that the female stood outside the truck's open driver-side door when the officers arrived with CM#1 at the ajar front passenger door. NE#1 wrote that CM#1 eyes widened when he saw them, and he "scrambled inside of the cab." Due to the missing license plates, NE#1 believed the truck was stolen. NE#1 stated that he approached and saw CM#1 using a yellow screwdriver to start the truck. NE#2 stated they ordered CM#1 out, but CM#1 refused. NE#1 grabbed and tossed the screwdriver. NE#1 noted pepper spray and brass knuckles in the truck. NE#2 TASED CM#1. NE#1 indicated that CM#1 gripped the steering wheel as officers tried to remove him from the truck. They eventually pulled him from the truck and handcuffed him. CM#1's female companion fled and was not located.

NE#2 wrote a use-of-force statement outlining his perceptions and motivations before using force. NE#2 stated that he saw NE#1 struggling to remove CM#1 from the truck as CM#1 attempted to start it. NE#2 indicated that CM#1 ignored several commands to exit the truck despite probable cause it was stolen. NE#2 wrote that he TASED CM#1 out of concern for NE#2's safety. NE#1's use-of-force statement generally mirrored his incident report.

Body-worn videos (BWV) showed that upon arrival, NE#1 and NE#2 quickly exited their patrol car, repeatedly yelling, "Nope," to someone out of frame. They ran toward CM#1's truck. A white female stood at the open driver-side door. NE#2 grabbed her arm and guided her from the truck. CM#1 slid into the driver's seat.

NE#2 grabbed the female subject as CM#1 moved to the driver's seat.



CM#1 gripped the steering wheel as NE#2 grabbed and tried to pull CM#1 from the truck. NE#2 yelled, "Get the fuck out [of] the truck." NE#2 struggled to remove CM#1 and repeated, "Get out of the truck right now." CM#1 asked, "What did I do?" NE#2 ordered, "Get out of the truck," and "Don't move." NE#2 told NE#1, "I'm going to TASE him." CM#1 repeated, "What did I do?" NE#2 repeated, "Get the fuck out of the truck, now." NE#1 tells NE#2 that CM#1 had a screwdriver in his right hand. A few seconds later, NE#1 told NE#2 that NE#1 took the screwdriver. NE#1 ordered CM#1 to put his hands behind his back. CM#1 again asked what he did. NE#1 repeated the order. NE#1 told CM#1 he was under arrest and asked whether CM#1 understood. NE#2's right arm wrapped around CM#1's head, and NE#2's right hand gripped CM#1's chin as NE#2 tried pulling CM#1 from the truck.



CM#1 held onto the steering wheel as NE#2 tried pulling him out of the truck.



While struggling with CM#1, NE#2 said, "Alright, TASER time." NE#2 repeated, "TASER time," while holding CM#1 and unholstering his TASER. CM#1 replied, "Okay, no." NE#2 drive stunned³ the TASER at CM#1's upper left arm. CM#1 yelled, "Okay," before NE drive stunned CM#1's left leg.

¹ The red arrow points to NE#2 gripping CM#1's chin. NE#2 and CM#1's faces are covered with white circles. The angle is from NE#2's BWV, which fell.

² The red arrow points to CM#1's left hand gripping the steering wheel.

³ Drive stun means pressing the TASER's electrodes directly against a subject rather than deploying probes.



NE#1 pulled CM#1 from the truck.

ANALYSIS AND CONCLUSIONS:

Named Employee #1 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

It was alleged that NE#1 used unauthorized force against CM#1.

An officer's use of force must be reasonable, necessary, and proportional. SPD Policy 8.200(1). Specifically, officers shall only use "objectively reasonable force, proportional to the threat or urgency of the situation, when necessary, to achieve a law-enforcement objective." *Id.* Reasonableness depends "on the totality of the circumstances" known to the officer when the force is applied balanced against "the rights of the subject, in light of the circumstances surrounding the event." SPD Policy 8.050. It must also consider that officers are often forced to make "split-second decisions" under tense, dynamic circumstances. *Id.* The policy lists several factors to weigh when evaluating reasonableness. *See id.* Force is necessary when "no reasonably effective alternative to the use of force appeared to exist" and "the amount of force used was reasonable to effect the lawful purpose intended." *Id.* Last, the force must be proportional to the threat posed to the officer. *Id.*

BWV showed that NE#1 used relatively low-level force throughout the encounter. Specifically, when CM#1 tried starting the truck with a screwdriver, NE#1 entered the front passenger side and used his knee to pin CM#1's right arm to prevent it. NE#1 grabbed the screwdriver from CM#1 and tossed it. Overall, NE#1's force never exceeded control holds, at most causing transitory pain.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

⁴ The red arrow points to NE#2's TASER drive stunning CM#1's leg.



Recommended Finding: **Not Sustained - Unfounded**

Named Employee #1 - Allegation #2

8.100 - De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force.

It was alleged that NE#1 failed to exhaust de-escalation options before using force against CM#1.

“When safe, feasible, and without compromising law enforcement priorities, officers will use de-escalation tactics to reduce the need for force.” SPD Policy 8.100-POL-1. Officers are encouraged to use team approaches and consider whether an officer successfully established rapport with the subject. *Id.* De-escalation options are guided by the “totality of the circumstances.” The policy lists several examples of de-escalation, emphasizing communication, time, distance, and shielding to minimize the need for force. *Id.*

Here, NE#1 and NE#2 initially had no opportunity to utilize de-escalation tactics, as CM#1 immediately attempted to flee upon their arrival. As the officers struggled with CM#1, they noticed a screwdriver in his right hand and pepper spray and brass knuckles in the cabin. Neither officer had a chance to establish a rapport with CM#1 or use communication, time, distance, and shielding to minimize the need for force since CM#1 actively resisted lawful detention.

Accordingly, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**

Named Employee #2 - Allegation #1

8.200 - Using Force (1) Use of Force: When Authorized

It was alleged that NE#2 used unauthorized force by manhandling and TASING CM#1.

Here, NE#1 and NE#2 used control holds to overcome CM#1’s attempted flight. Those tactics were objectively reasonable and necessary, given CM#1’s active resistance and access to weapons. They were also proportionate with CM#1’s resistance. Similarly, NE#2 wrapping his arm around CM#1’s head while gripping his chin was within policy. It was a department-trained cross-face tactic used to gain compliance from actively resistant subjects. Moreover, as control holds proved ineffective, NE#2’s TASER election was objectively reasonable, necessary, and proportional. After NE#2 repeatedly warned CM#1 about an imminent TASER application and CM#1 professed an intent to comply, CM#1 never submitted. BWV captured CM#1 still gripping the steering wheel after “I’ll stop. I’ll stop.” Accordingly, NE#2’s initial drive stun at CM#1’s upper left arm was within policy. However, NE#2’s drive stun at CM#1’s left leg was questionable since he failed to give CM#1 an adequate opportunity to submit before that application. NE#2 told OPA that the second application was inadvertent “caused by a sympathetic reflex reaction.”

Accordingly, OPA recommends this allegation be Not Sustained – Training Referral.

- NE#2’s chain of command shall discuss OPA’s findings and SPD Policy 8.200(1) with NE#2 and provide appropriate training and counseling. Training and counseling shall be documented and maintained in Blue Team.



Recommended Finding: **Not Sustained - Training Referral**

Named Employee #2 - Allegation #2

8.100 - De-Escalation, 1. When Safe, Feasible, and Without Compromising Law Enforcement Priorities, Officers Will Use De-Escalation Tactics to Reduce the Need for Force

It was alleged that NE#2 failed to exhaust de-escalation options before using force.

For the reasons at Named Employee #1 – Allegation #2, OPA recommends this allegation be Not Sustained – Unfounded.

Recommended Finding: **Not Sustained - Unfounded**